No. 225. 224
FILED
DEC 6 1899
JAMES H. MCKENNEY,
CLERK.

Brief of Reed & Thacher for Appellants & Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Dec. 22d, 1899.

SHIRLEY T. HUSH ET AL.,
Appellants,

vs.

F. R. COYNE, Collector, &c., ET AL.,
Appellees.

No. 367.

EBEN J. KNOWLTON ET AL.,
Plaintiffs in Error,

vs.

FRANK R. MOORE, Collector, &c., ET AL.,
Defendants in Error.

BRIEF FOR APPELLANTS AND PLAINTIFFS IN ERROR.

THOMAS B. REED,
THOMAS THACHER,
Of Counsel.

C. G. Burgoyne, Walker and Centre Street, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1899.

SHIRLEY T. HIGH ET AL., Appellants, vs. F. E. COYNE, Collector, etc., *et al.*, Appellees.	No. 225.
EBEN J. KNOWLTON ET AL., Plaintiffs in Error, vs. FRANK R. MOORE, Collector, etc., *et al.*, Defendants in Error.	No. 387.

Brief for Appellants and Plaintiffs in Error.

There could be no better time for the Court to pass upon the question at issue in the fullest and most satisfactory way. When the income tax question was before the Court, a decision such as was made involved a loss of revenue so great that other taxes had to be levied or a loan raised to meet the deficit caused by

the decision. The situation was such that the Court would have been more than human not to have been affected by it. Indeed, a Court out of touch with the thoughts of humanity would be unfit to marshal the affairs of human beings. Nevertheless, the Court did its whole duty in a way which renewed and heightened the esteem which it has always commanded except in times of extreme political excitement.

In the light of that decision other questions have arisen which have far-reaching consequences, but no surroundings which could affect our judgments. We have abundant revenue, so abundant that it unfavorably reacts on our general monetary condition. Our country would be better off not merely for the moment, but for all time, for a solid constitutional basis and limitation of taxation.

The Congress has power to lay and collect taxes, duties, imposts and excises by the very words of the Constitution.

But this power is limited in the case of capitation or direct taxes. If the tax in question is a direct tax, there is no dispute that it is unlawful because not properly laid.

One incident of unlimited taxation is that it is the power to destroy. While no one would contend that taxation is necessarily ~~any~~ destruction, yet the power ~~or probably~~ to destroy is one of the *indicia* of lawful unlimited taxation, and in this case is a final test. If lawful, it involves possibility of destruction. If the Constitution did not in any given case intend to give the power of destruction, then it did not give the power of unlimited taxation.

The doctrine in McCulloch vs. Maryland was very simple. If taxation was allowed, destruction might

follow. Destruction was never intended. Therefore, taxation was never intended. Taxation by the State could destroy the National Bank. The Constitution could not have intended that one of its instrumentalities should be at the mercy of any State. Therefore, taxation by the State could not be permitted.

The decision in McCulloch vs. Maryland was that the States could not tax the instrumentalities of the United States. The converse of that proposition holds true. The United States derives its powers from the Constitution. On taxation its powers are express. They can destroy nothing left to the States except where authorized by the Constitution. Therefore, they cannot tax in unlimited fashion, except where authorized by the very words of the Constitution. If they wish to exercise the power to tax, which, in its ultimate expression, is the power to destroy, there must be express authority. The only express authority given has this limitation—that the tax, if on property, must be laid on the census basis. Moreover, the doctrine, which was declared in McCulloch vs. Maryland as to the lack of power in the State to tax where destruction of United States rights were involved, was affirmed *e converso* where the United States tried to tax State functions.

All these cases are but expressions of the same idea, that no power is given under our system to either State or nation which involves the destruction of the functions of one by the other, unless by express limitation or necessary implication. On no other principle could our dual government exist. No greater service can be done the country, even by so great a tribunal as this, than the reaffirmation of this sound doctrine.

The States cannot tax United States instrumentalities (McCulloch vs. Maryland).

The United States cannot tax State instrumentalities. For example, they cannot tax revenues of municipalities, creditors of the State (U. S. vs. R. R. Co., 17 Wall., 322–332), nor the officers of the State (Collector vs. Day, 11 Wall., 113) nor its bonds (Merc. Natl. Bank vs. N. Y., 121 U. S., 138, 162).

All these decisions proceed not upon express words, for there are none, but upon the nature of things. If dual government is to exist, it can only exist in separate spheres. Two trains cannot travel in opposite directions on the same track at the same place. There may be switches, but these switches are those provided by the Constitution of solid metal, to be observed by all engineers on peril of smashup.

But is the tax in question a possibly destructive tax? Bring it to the test of the cases cited. What is the ultimate expression of this tax? If you can put five per cent. tax on the transfer, you can put one hundred per cent. That is destruction. Now, has the United States, under the Constitution, the right of destruction of real estate and personal property, which depend entirely, and were intended to depend entirely, on the State? Did the States surrender the right to control their real estate and personal property? According to the census, yes; otherwise, no.

It would seem, then, conclusive that the taxation was possibly destructive of rights reserved to the States.

If it cannot be justified as taxes, cannot it be under Article I., Section 8, 1st clause? Nobody will contend that it was a "duty" or an "impost." If anything, it must be an excise.

As to that the argument is :

1st. That the tax is not an excise. It is no more an excise than was the income tax. In fact, this Court, in Scholey vs. Rew (23 Wall., 337), held that there was no distinction in principle between an income tax and a succession tax.

To quote the exact words :

" The tax on income, which cannot be distinguished in principal from a succession tax, such as the one involved in the present controversy." Hence, it would follow that, the Court having justly decided the income tax to be a direct tax, should decide a succession tax to be direct also and not an excise, unless the Court has discovered some new distinction.

When the Constitution was adopted the word " excise " had a definite meaning. It was not a loose expression, but a very definite one. It meant a taxation of consumption or of special facilities to do business.

Mr. Justice SWAYNE says (Pacific Ins. Co. vs. Soule, 7 Wall, 433) :

" Excise is defined to be an inland imposition, sometimes upon the consumption of the commodity and sometimes on the retail sale, sometimes on the manufacturer and sometimes on the vendor."

No excise we have ever yet attempted has ever got beyond this definition, which, if we analyze it carefully, seems to mean a tax on consumption, for manufacturing is for that purpose, and so is retail selling. Excise is really on consumption. Nor does the case of Nicol vs. Ames (173 U. S., 509) go any further. On the contrary, it is a most distinct recognition of the idea that, while Congress may tax facilities, opportunities and privileges of doing business, it may not tax business

itself as such. Property has for one of its values transferability. That value cannot be taken away except by the States. Any special facility or opportunity or privilege of transfer, however, may be taxed. Such is the decision of Nichol vs. Ames. To make this distinction more clear, Mr. Justice PECKHAM says, and his language reaches this very case :

" A tax upon the privilege of selling property *at the exchange*, and of thus using the facilities there offered in accomplishing the sale, differs radically from a tax upon every sale made in any place. *The latter tax is really and practically on property.*

This covers the case at bar. The transfer here uses no uncommon facility, opportunity or privilege, only the facility, opportunity and privilege of death. Perhaps Congress might tax those whose property is transferred by death in the army, on account of increased opportunities, but is not likely so to do for other reasons.

2d. If the argument already made be not conclusive, as it seems to us it is, then the Court must inquire whether this tax is uniform throughout the United States. Whatever may be the effect of the last three words, or even what may have been intended by the framers of the instrument we are interpreting, it is to be hoped that no Court or Congress will attempt to repeal the fundamental law of a free people, that taxation must be uniform. Taxation is not only " a practical thing," as Mr. Justice PECKHAM well says in Nicol vs. Ames, but it is practical in its results. Liberty will not long survive equality, whether the inequality be supposed to favor the poor or the rich. Both poor and rich are alternately in danger, and the

scales of justice must be so held that neither will kick the beam.

That the tax in question is not uniform and not equal seems to have the most diverse foundations, and to have accumulated more good reasons for its destruction than any of its predecessors elsewhere. Not only are the taxes ununiform and unequal in the percentages mounting upwards, but they seem to be determined, not on the basis of what each one gets, but also on the basis of the total amount distributed, and the cost falls on the estate of the deceased, and depends, not on what he wants to give each one, but on what he wants to give all.

If we do no more than restate this question, and do not further argue it, it is not because of lack of faith, but because other briefs have worked the problem out so fully that nothing new remains to be said.

We conclude:

1st. That if this is not a direct tax, then the State can at any moment have the rights of property of its citizens put in jeopardy by a right on the part of Congress to tax transfers of property as such.

2d. That if there is no distinction in principle between an income tax and a succession tax, and the Court has decided an income tax invalid, either some distinction must be found or both taxes meet the same fate.

3d. As an excise tax, the tax in question is not equal or uniform; or

4th. If it be uniform, it is not an excise tax, because it is neither on consumption nor on privileges or opportunities or facilities, but "really and practically on property."

We might add, and the Court might well take into

consideration, some general observations on the duty of making the foundations of taxation close and exact. While taxes are as a rule well spent in modern days, yet the spending is by those who have not earned them, and every nation should seek to leave the spending of money for the most part to those who have earned it. One of the worst opportunities afforded careless legislators is confusion of thought as to the limits of taxation. The sphere of the United States should be fully defined and double taxation avoided. If the people of the United States ever do seriously discuss the question of taxation, they will be amazed at the proportion it bears to the taxable accumulated property held by the people. By having a dual system of taxation, the people of the United States under any decision of the Court have the disadvantage of being the subjects of two sets of taxes, but this disadvantage may be reduced by careful and logical adherence to the principles already laid down by this Court.

While Congress should pay attention to the constitutionality of measures and should not ignore the fact that its action should, equally with the action of this Court, protect that instrument, nevertheless, as a practical fact the Congress does not, but passes the duty to this Court, which alone has become in doubtful cases the safeguard.

THOMAS B. REED,
THOMAS THACHER,
Of Counsel.

No. 225 and 387.

DEC 5 1899
JAMES H. McKENNEY,
Clerk.

Brief of Ward for Appts.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Dec. 5, 1899.

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F. E. COYNE, COLLECTOR, ETC., ET AL., APPELLEES.

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EBEN J. KNOWLTON ET AL., PLAINTIFFS IN ERROR,

vs.

FRANK R. MOORE, COLLECTOR, ETC., DEFENDANT IN ERROR.

BRIEF FOR APPELLANTS.

HENRY M. WARD,
For Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 12-5-'99

IN THE

Supreme Court of the United States.

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FRANK R. MOORE, COLLECTOR, ETC., DEFENDANT IN ERROR.

BRIEF FOR APPELLANTS AND PLAINTIFFS IN ERROR.

Counsel for appellants and plaintiffs in error submits this brief upon two points only, all the other points having been fully covered in the briefs of other counsel.

I.

The graduated or progressive rate of taxation in this act is based upon the value of the whole estate of the decedent,

and not upon the value of the legacy transferred or of the privilege or interest enjoyed by the legatee, and hence is, in practical effect, whether the tax is direct or indirect, a regulation of the succession to personal property.

The Solicitor General maintains, as do we, under his sixth point, at pages 11 and 22, that the tax is graded according to the value of the whole estate, and does not raise, as we had expected that he would, the point that the true construction of the act is that where the value of the entire estate is greater than $25,000 the rate of tax increases progressively and at a rate graduated with the value of the legacy, as such value passes from $25,000 to $100,000, to $500,000 and to $1,000,000. This construction is briefly referred to at page 31 of Mr. Otis' brief, but we differ from him in his conclusion as to the effect of such a construction upon the rate of the tax.

We submit that the words in the beginning of the first paragraph of section 29 of the act—

> "Where the whole amount of such personal property as aforesaid shall exceed the sum of $10,000 in actual value passing after the passage of this act"—

and the words at the end of the same paragraph—

> "Where the whole amount of said personal property shall exceed in value $10,000 and shall not exceed in value the sum of $25,000 the tax shall be," etc.—

must refer to the entire personal estate, the sum of all the legacies or distributive shares in the hands of the executor or administrator; they do not admit of any judicial construction so as to be held to refer to the value of the separate legacies or shares.

If, then, the words "said property," in the last paragraph of section 29, where they occur in the phrases—

> "Where the amount or value of said property shall exceed the sum of $25,000 but shall not exceed the sum or value of $100,000 the rates of duty or tax above set forth shall be multiplied by one and one-half," etc., etc.—

refer to the separate legacies or shares, they cannot also refer to the whole estate, so under this construction we would have the following classes based upon values:

(1.) Estates of less than $10,000, all legacies exempt.

(2.) Estates of between $10,000 and $25,000, all legacies, no matter how small, taxed.

(3.) Legacies of between $25,000 and $100,000 taxed at $1\frac{1}{2}$ times as high a rate as legacies in class 2.

(4.) Legacies of between $100,000 and $500,000 taxed at twice as high a rate as legacies in class 2.

(5.) Legacies of between $500,000 and $1,000,000 taxed at $2\frac{1}{2}$ times as high a rate as legacies in class 2.

(6.) Legacies of over $1,000,000 taxed at three times as high a rate as legacies in class 2.

But, under this classification, all legacies of less than $25,000, where the estate is greater than $25,000, would escape taxation, for, under this construction, there would be no part of section 29 which would impose any tax upon them, so that the only class of estates wherein such legacies

would be taxed would be estates of between $10,000 and $25,000 in value.

Such a construction would be absurd; it would be based upon caprice; would exempt an enormous amount of property, would lack uniformity, and, finally, would be in direct contravention of the first part of section 29, which says that the tax shall be imposed upon—

> "any person having in charge or trust . . . *any legacies . . . where the whole amount of such personal property as aforesaid shall exceed the sum of $10,000* in actual value."

We may take it, then, as at once conceded and established that the tax is graded according to the wealth of decedents, and we might multiply instances of how in effect it alters the succession laws of the State, so that the next of kin of a millionaire do not succeed to the same part of his estate as do the next of kin of men of less wealth, while the widow and husband are preferred to the orphan and may succeed to the entire estate without bearing any share of a burden which, if constitutionally laid, would be imposed upon all in the same proportion.

The Solicitor General cites and relies upon the decision of this court in Magoun *vs.* Illinois Trust and Savings Bank, 170 U. S., 283, as an authority upon the power of Congress to make a classification based upon values and to tax members of the various classes at differing rates. The only similarity in the Illinois classification to that in the present act was in the case of legacies to strangers, where it was held in the prevailing opinion that six classes were created in which the tax varied progressively with the value of the

legacy. Mr. Justice Brewer in his dissenting opinion held the true construction to be that the tax varied with the value of the whole estate, as in the present act, and that such classification was wholly arbitrary and invalidated the entire act, and we feel fully justified in saying that if the court had adopted his construction they would have concurred in his opinion.

It is conceded by the Solicitor General that if this tax does amount to a regulation of the subject of successions, it is invalid as being beyond the power of Congress. (See Brief of Solicitor General, pages 16 and 22.) He also concedes that if a direct tax it is invalid, but he takes the position that it is—

> "a duty or excise upon the right or privilege of the owner of the property to transmit it on his death, by will or descent to certain persons" (Fifth point, page 22).

Let us concede, for the argument only, that this construction is correct, and that this tax is upon the right or privilege of the decedent to dispose of his property by will or under the intestate laws, rather than, what we would consider a more natural conclusion, upon the right or privilege of the legatees or next of kin to succeed to or take possession of the property, and that this right or privilege can be taxed by Congress. It still would not follow, it is a totally different proposition to say, that Congress can make exemptions of certain rights and arbitrarily classify the right and privilege according to the wealth of the decedent and the relationship of the beneficiary. Take, as an example, the case of three persons who die intestate, A leaving a personal estate of

$10,000 and one next of kin, a nephew, who receives it all; B leaving a personal estate of $100,001. and ten next of kin, nephews and nieces, who each receive $10,000.10, and C leaving a personal estate of $1,000,000, no next of kin, and a widow who receives the whole estate. The succession to the property of A and of C is wholly exempt; upon the succession to the property of B a tax of $3,000 is paid and necessarily $300 deducted from the share of each next of kin, yet each of the next of kin of B has come into possession of property worth only ten cents more than that of the next of kin of A; for this additional ten cents each of them pays a tax of $300; or if the portions had each been just $10,000, each pays $225, while the widow of C, who receives ten times more than all the next of kin of B and one hundred times more than the next of kin of A, pays no tax whatever upon her privilege. The right or privilege of the intestate, if he has any, or of his next of kin or widow, is in each case purely a creation of State statute. Such right is in each case in exact proportion either to the amount of property left by the intestate or received by the next of kin or widow. The sole next of kin of A enjoys the same right or privilege and succeeds to the same property as each of the next of kin of B, yet the one is taxed, the other exempt, while A and C, the intestates, whose privileges, so called, are the one of one-tenth the value, the other of ten times the value of the privilege of B, are both arbitrarily exempted from the tax. Clearly in this case, and it does not suppose any unusual or extraordinary condition of fact, the intestate succession is materially regulated and affected in a manner totally different to that which would ensue if the tax were at the same rate of per-

centage upon every succession without exempting the shares of any class.

Instances might be multiplied of intestate successions which this act regulates under the guise of taxation. If the intestate has any taxable privilege, it is in exact proportion to the value of his whole estate. The descent of personal property to a nephew is no greater privilege to the intestate than its descent to his son, or, if it is, then surely the descent to the brother is of the same grade as the descent to the nephew, who stands in the place, in most statutes of distribution, of the deceased brother, and should be put in the same class and taxed at the same rate, while there is no State, as far as we know, which has treated the rights of ascendants, descendants, brothers, and sisters as being in the same class for any purpose.

Take, again, the case of charitable bequests. The States have almost universally exempted them from the operation of their own legacy taxes. This exemption is a matter of internal policy with the States and a means of encouraging and developing their charitable, educational, and religious institutions. Such institutions are the only kinds of corporations which are to any considerable degree the recipients of the bounty of testators. Among the members of the Roman Catholic Church bequests are almost universally made to the bishop of the diocese, and property belonging to that church is held in the bishop's name. In recognition of this fact the transfer tax of New York provides that property bequeathed to a person who is a bishop or to a religious corporation shall not be subject to the terms of the act. Few bequests of any value are made to either charitable corporations or the

church except by persons owning estates of over half a million dollars in value; yet under this law all charitable bequests from the large estates are taxed from 12½ to 15 per cent. Harvard University has since the law went into effect paid or become liable to pay over $100,000 for the privilege of receiving legacies, and the Roman Catholic Church at least as much more. We cite these as instances because they have come under our personal observation. Doubtless other institutions and other churches are liable under the act to pay at least as much more. The Solicitor General at once sees the difficulty and points out the means of escape. He says at page 30 of his brief:

> "It is ultimately charged up against the estate, and so the burden either falls upon the legatee or distributee, or is foreseen and provided against by the testator or intestate. It is impossible to say that under the operation of the act the tax is paid by the legatee, for naturally the testator, in making his will, will take into consideration the tax, so the legatee will get all the testator intended to leave him after the tax is paid."

In other words, if a millionaire wants a charity to receive $100,000, he must leave it $117,647, and the tax of $17,647 will then be borne eventually by the residuary legatee or the other legatees, whose legacies will thus have to be cut down to pay the tax upon a legacy given to another. This suggestion of the Solicitor General amounts to an admission that this act is intended to tax the rich at a higher rate than the poor, rather than to provide for the general welfare of the country. Such questions, it is true, are not conclusive upon the question of the power to pass an act of this kind; but we submit that the court is entitled to consider that the

burden of this taxation falls most heavily upon those institutions of learning and charitable and religious bodies which have been almost universally exempted by the States which created them from every form of taxation.

Another point to be made against this law as in effect regulating the succession is that while all estates of less than $10,000 are exempted, all legacies or shares of less than $10,000 are taxed whenever the whole estate is greater than $10,000. If any exemption is to be made of $10,000, and we do not dispute that the Government in the exercise of its taxing power can make small and reasonable exemptions, yet that exemption once made should apply to all alike—if any sum of $10,000 is to be exempted, every sum should be, as in the case of the income tax of 1894, where $4,000 was absolutely exempted out of every income, however large. In this law the sum of $10,000 is so large that its exemption in some cases and taxation at various rates in others clearly effects a regulation of the subject of successions.

II.

Those State decisions which have treated the State succession taxes as taxes pure and simple and not as regulations of the subjects of wills and succession have held that laws similar to this act in their exemptions and progressive rates violate the requirement of uniformity of taxation contained in the State constitutions.

The power of the States over the subject of wills and intestate successions is so complete and exclusive that they can forbid devises to the United States (U. S. *vs.* Fox, 94

U. S., 315), can tax bequests to the United States (U. S. *vs.* Perkins, 163 U. S., 625), and can limit the amount which a corporation can receive by will where testator leaves a wife and children (Laws of N. Y. 1860, ch. 360, § 1; Fairchild *vs.* Edson, 154 N. Y., 214). The State transfer tax laws are generally held to be not mere tax laws, but regulations of the subjects of wills and descents. Considered as tax laws alone, they could not be sustained, because of their exemptions and variations in rate. This is the settled doctrine of most of the States, and it has been adopted by this court in the *Perkins* and *Magoun* cases. Yet in certain States the inheritance taxes, considered as taxes alone, have been declared invalid for a lack of uniformity under provisions of the State constitutions similar to the provisions of the Constitution of the United States.

The constitution of Wisconsin provides:

> "All such laws (general tax laws) shall be uniform in their operation throughout the State."

In 1889 the legislature passed an act (ch. 176, L. 1889) providing that in counties of over 150,000 inhabitants all estates over $3,000 in value should pay a certain percentage to the county treasurer. In the case of State *vs.* Mann, 76 Wis., 780, the court says:

> "Manifestly the act for the imposition and collection of the tax in question is not uniform in its operation throughout the State, but in direct violation of the provisions of the constitution is not only limited in its operation to Milwaukee county, but is further limited to a certain class of estates in that county. For these obvious reasons we must hold that the act in question is unconstitutional and void."

The constitution of Minnesota provides, § 1, article 9:

> "All taxes to be raised in this State shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the State."

In State *vs.* Gorman, 40 Minn., 232, at 235, the court says with reference to chapter 103, Laws of 1885, which required estates to pay various sums ranging from $10 on estates of less than $5,000, $1,000 on estates of from $200,000 to $500,000, and $5,000 on all estates of over $500,000:

> "While a large discretion must be allowed to the legislature in devising schemes for taxation, so as to secure equality as near as may be, it can hardly be doubted that in this case the constitutional requirement was not observed."

The Ohio constitution provides that—

> "All laws of a general nature shall have a uniform operation throughout the State."

This constitutional provision was held to mean—

> "that laws of a general nature shall be in *full and equal* force in all parts of the State."
>
> State *vs.* Nelson, 52 Ohio St., 88, and cases cited.

And the Ohio succession tax, which is graded on a plan very similar to that at bar, was held invalid because of lacking such uniformity.

> State *vs.* Ferris, 53 Ohio Stat., 336.

To the same effect, and on the broad principle that equality of burden must underlie every system of taxation, is the decision upon the New Hampshire legacy tax in

> Curry *vs.* Spencer, 61 N. H., 624.

The long line of New York, Massachusetts, and Illinois decisions upholding the validity of classifications and variations in rate all turn upon the point that the acts in question are not tax laws, but regulations of the succession to decedents' estates, and it may be added as further distinguishing the many New York decisions that in the New York constitution there is no requirement that taxes shall be uniform.

HENRY M. WARD,
Counsel for Appellants and Plaintiffs in Error.

DECEMBER, 1899.

No. 225.

Add'l Brf. of Pence & Carpenter

Pounded by Court

Filed Mar. 7, 1900.

Office Supreme Court U. S.
FILED
MAR 7 1900
JAMES H. McKENNEY, Clerk.

IN THE

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OCTOBER TERM, A. D. 1899.

No. 225.

SHIRLEY T. HIGH et al.,
Appellants,
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Appellees.

ARGUMENT FOR APPELLANTS BY ORDER OF COURT.

ABRAM M. PENCE,
GEORGE A. CARPENTER,
SHIRLEY T. HIGH,
COUNSEL FOR APPELLANTS.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

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Appellees.

ARGUMENT FOR APPELLANTS BY ORDER OF COURT.

On February 26, 1900, this court entered the following order in said cause:

> "Ten days given counsel to submit briefs on the construction of the act under consideration in respect of the question whether the tax or duty imposed on each of the legacies is measured by the volume of the estate or by the amount of the legacy."

In obedience to such order we submit the following:

Section 29 of the act reads as follows:

> "That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property where the the whole amount of such personal property as aforesaid shall exceed the sum of

ten thousand dollars in actual value, passing, after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any state or territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax to be paid to the United States, *as follows, that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:*

"First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

"Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

"Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest.

"Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the person who died possessed as aforesaid, at the rate of four dollars for

each and every hundred dollars of the clear value of such interest.

"Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will, or by the laws of any state or territory, to husband or wife of the person died possessed as aforesaid, shall be exempt from tax or duty.

"*Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiptied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of such property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of such property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.*"

(For convenience of reference we have italicized parts of this section.)

All parts of a statute must be construed together so that there may be a harmonious whole. When a statute is plain and intelligible, there is no room for construction.

An ambiguity will never be created by construction where the language is unambiguous when applied to its proper subject-matter.

If there be a subject-matter in the statute to which the language under construction may be applied, then it will not be applied to another subject-matter in the same statute which will make it ambiguous.

The tax or duty is imposed upon each of the legacies. Section 29 imposes the same upon the administrator, executor or trustee *with respect to such legacies*, and section 30 recites over and over again that such tax or duty is imposed *upon* the legacies, and section 30 clearly makes such tax or duty a lien upon the whole estate.

In our judgment, the statute under consideration admits of no other construction than that the measure of such tax or duty is the *volume of the estate* out of which the legacies and distributive shares arise, and not the *amount of the legacy* itself, for the following reasons:

Because the first part of the first sentence provides,

> "That any person or persons having in charge or trust, as administrators, executors or trustees, *any legacies or distributive shares arising from personal property*, where the *whole amount of such personal property* as aforesaid shall exceed the sum of ten thousand dollars in actual value, *passing*, after the passage of this act, *from any person possessed of such property*, either by will or by the intestate laws of any state or territory, * * * shall be, and hereby are, made subject to a duty or tax, to be paid to the United States,"

which indicates that such administrators, executors or trustees shall be made liable with respect to such legacies or distributive shares.

Section 30 also provides that such legacies or distributive shares are made liable to such duty or tax. Such administrators, executors or trustees are not made individually liable, but only with respect to such legacies or distributive shares out of which they may idemnify

themselves. The same clause or part of sentence above quoted provides that they are only made liable where such legacies or distributive shares arise *from personal property* by will or by the intestate laws of any state or territory where *the whole amount of such personal property so passing* and out of which such legacies or distributive shares arise exceed $10,000 in actual value.

Thus it appears from this provision that the amount of the legacy or distributive share does not determine the liability thereof, or the liability of the administrators, executors or trustees with respect thereto, to a tax or duty; but the fact that it arises out of an estate exceeding $10,000 in actual value determines such liability.

It matters not what the amount of such a legacy or distributive share may be, whether it be $500 or $100,000. All that is required is that the estate shall exceed $10,000.

It must here be borne in mind that a liability is placed upon such legacy, whatever it may be, when the estate out of which it arises exceeds $10,000; and we will hereafter refer to this fact as showing that any construction of the subsequent clauses of the section, which would relieve *any legacy* of whatever size from such liability, arising out of such an estate, would be in antagonism and out of harmony with the whole scheme of the statute.

The relation of decedent and legatee or distributee does not establish the liability of such legatee or distributee, or of his obligation or that of the administrator, executor or trustee, to pay the tax.

Such relationship is one of the elements only in ascertaining the *amount* of said tax, but not the liability therefor; the liability for any tax whatever is determined by the foregoing clause quoted from.

By this clause every legacy or distributive share, however small or however large, is to be taxed if the estate out of which it arises exceeds $10,000.

In other words, the liability of such legacy and distributive share is "*measured by the volume of the estate*," whereas, "if measured by the amount of the legacy" it might happen, or would often happen, that many legacies out of estates exceeding $25,000—as, for instance, out of estates of $100,000, or even a million dollars, or more, would not be liable at all; that is, if the legacy were less than $10,000.

Such is not the meaning of the clause quoted and such cannot be the meaning of any portion of the statute. In order further to show that such a construction cannot be entertained for a moment, we refer to the next clause in section 29, which we have italicized and which is as follows:

> "That is to say, where the whole amount of *said personal property* shall exceed in value ten thousand dollars and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be: First," etc.

What is meant by the words "the whole amount of said personal property shall exceed in value ten thousand dollars," etc.?

Is it not the same personal property referred to in the previous clause and almost in the exact language? The previous clause reads:

> "That any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property, where *the whole amount of such personal property, as aforesaid*, shall exceed the sum of ten thousand dollars in actual value, passing," etc., "shall be made subject to a duty or tax," etc.

What shall be made subject to a tax? The legacies or distributive shares. When? When *the whole amount of said personal property* shall exceed $10,000.

The whole amount of said personal property is either the *whole estate*, or the whole of *all the legacies and distributive shares* exceeding $10,000 and not the amount of a single legacy. The "*whole amount*" would have no significance if applied to a single legacy.

Can anyone doubt from the foregoing alone that it is not the legacy or distributive share that must exceed $10,000 in order to be liable to the tax, but that any legacy, however small, is liable to the tax if it arises out of an estate exceeding $10,000; that is, the liability to the tax depends not upon the amount of the legacy, but upon the volume of the estate out of which it arises.

Now, if we will read the first *numbered* paragraph of section 29 we will see still more clearly, if it were possible that the *liability* and rates are fixed not by the amount of the legacy but by the volume of the estate out of which it arises, and also by the relation of the legatee and distributee to the decedent.

The first *numbered* paragraph of section 29 reads:

> "First: Where the person or persons entitled to *any beneficial interest* in such property shall be the lineal issue or lineal ancestor, brother or sister to the person who died possessed of such property as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value *of such interest in such property.*"

Who is the person entitled to *any beneficial interest in such property?* It is the legatee or distributee. What does "*in such property*" mean? If it had meant the legacy, the words, "where the person or persons entitled

to *any beneficial interest in such property* shall be lineal issue," etc., would not have been used, but something like the following would have been used: "Where the person entitled to such property shall be the lineal issue," etc.

It appears from this first numbered paragraph, therefore, that there is a distinction between the legacy and the volume of the entire estate; that is, a person having a *portion of such beneficial* interest carved out of the volume of the entire estate is to be taxed at a certain rate, namely, seventy-five cents on the hundred dollars, and it does not provide that the person having a legacy of $10,000 shall be taxed at that rate, but a person having a legacy of any size carved out of an estate exceeding $10,000 is to be taxed at the rate aforesaid irrespective of the amount of such legacy.

The words, "*in such property,*" clearly mean in the property referred to in the previous clause in italics, namely, an estate exceeding $10,000 and not exceeding $25,000, and that the amount to be taxed at the rate prescribed is *any amount* which *any beneficiary* may have in the volume of the estate out of which the legacy arises. That previous clause introduces a certain class of estates; namely, those exceeding $10,000 and not exceeding $25,000, and proceeds to levy a tax against any person *entitled to any beneficial interest in such property*, be the small large or small. This *first numbered* paragraph for the first time introduces a rate and discrimininates between the volume of the property out of which the legacy is to be drawn and the amount of the legacy itself.

The rate does not vary in these *five numbered* paragraphs according to the size of the legacy but according

to the relationship of the parties. The legatee does not purport to be taxed by this *first numbered* paragraph upon a legacy exceeding $10,000 and not exceeding $25,000 at the rate of 75 cents upon a hundred dollars, but is taxed upon *his beneficial interest*, whatever that may be, arising out of an estate of a certain amount. It is *his beneficial interest* in such estate that is taxed, but the rate is measured in part by the amount of the estate out of which it arises.

Again, by referring to the first two lines of paragraph numbered *first*, which reads: "Where the person or persons *entitled to any beneficial interest* in such property," etc., we see that the legacy which is to be taxed at such rate is not the *entire* property previously referred to in the italics, but it is *any beneficial interest* in the whole of some personal property, thereby indicating that *whatever the beneficial interest* may be in said personal property exceeding in value $10,000, and not exceeding $25,000, is to be taxed at the rate therein indicated. It may be $100 or it may be $1,000, which shows that it is not the *amount* of the legacy or *beneficial interest* which measures the tax, but *the estate* out of which it arises. And again, at the end of that sentence in the *first numbered paragraph*, we see that "the rate of 75 cents for each and every hundred dollars of the clear value," etc., is not upon the clear value of *the property* described in the previous italicized paragraph, but it is 75 cents on every hundred dollars of the clear value "*of such interest*" in "*such property*," meaning the property referred to in the italicized paragraph preceding it.

Thus there can be no doubt that the rate is measured not by the size or amount of the legacy, but by the size or amount of the estate out of which the legacy arises.

If there could be a shadow of a reason why we should treat the words "*personal property*" or the words "the whole amount of such personal property" in the first five lines of section 29 as relating to the legacy itself and not to the volume of the estate, there could remain no doubt, when we come to consider the first numbered paragraph, but that the words "the whole amount of said personal property" appearing in the first five lines of the section and also in the first italicized paragraph mean the entire amount of the personal estate.

Can any reason be perceived why Congress should have used the following words: "Any legacies or distributive shares *arising from personal property where the whole amount of such personal property, as aforesaid*, shall exceed the sum of $10,000 in actual value, passing," etc.; in case the limit of $10,000 applied to the individual legacies or distributive shares, instead of to the whole amount of the entire personal estate; or why the words should have been used at all, "the whole amount of such personal property," in case it was intended that only legacies were to be taxed which individually exceed $10,000?

The draftsman of the bill clearly intended that there should be no doubt or ambiguity, and hence he used the words that while the legacies or distributive shares should be taxed, it should only be where they arose from personal property exceeding $10,000. Why use the words "arising from personal property" if the legacy itself exceeding $10,000 is to be taxed, instead of the estate out of which it was to arise?

Is it possible that any clearer language could have been used to express the idea that the *volume* of the estate and not the *amount* of the legacy was to fix the rate upon the legacy?

It is idle to claim that the rates contained in *numbered paragraphs first, second, third, fourth and fifth* are based upon the amount of the legacy. Such construction has no basis in a single word, clause or paragraph.

The rates fixed by numbered paragraphs second, third, fourth and fifth vary from paragraph first according to the relationship only.

We are now prepared to consider the last paragraph of section 29, which is in italics. It reads as follows:

> "*Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty thall be multiplied by two; and where the amount or value of such property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of such property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.*"

It seems clear to us that the object of the paragraph just quoted is to take up the various classes of estates measured by different amounts, *in their order*, and to provide for the taxation of the legacies arising therefrom in the same way that estates exceeding $10,000 and not exceeding $25,000 were taken up and disposed of in the first instance. This paragraph has the same meaning precisely as our first italicized paragraph, and the numbered paragraphs following the same, excepting that it relates in progression to estates of larger amounts, and has the same

meaning or significance as if Congress had repeated our first italicised paragraph, only changing the amount of the estate being dealt with, and then had added the numbered paragraphs first to fifth respectively, and had gone through, in order, the estates valued at the different amounts in detail, the same as was done in the first instance. That paragraph can have no other significance.

Have we heretofore established that all the legacies and distributive shares, *however small*, arising out of an estate exceeding $10,000 and not exceeding $25,000, are liable for such tax or duty at the rates prescribed in the numbered paragraphs first, second, third, fourth and fifth, and that such rates are not measured by the amount of the legacies but by the volume of the estate out of which they are drawn, in part at least? If we have, then we know at once and exactly the meaning of this last paragraph in italics.

It means that as the size of the estate out of which legacies and distributive shares arise, increases, so does the rate of the tax or duty upon all such legacies, however large or smaall, increase, and that legacies of the same size or amount to persons standing in the same relationship vary as to the rate of the tax according to the size of the estate from which they are drawn.

Does not the language read thus:

> "Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax *above set forth* shall be multiplied by one and one-half," etc.?

It is almost the identical language used in the first italized paragraph.

What is the meaning of the words "the rates of duty or tax above set forth"?

"The rates of duty or tax above set forth" refer to the rates established by the numbered paragraphs, first to fifth, inclusive; and we have found heretofore that such rates upon the legacies referred to in those paragraphs are determined by the *volume of the estate* out of which they arise, as well as by the relationship, and not by the size of the legacy.

If such be the case, then the meaning of this last italicised paragraph is determined. It means that the rates are increased according to the increase of the size and volume of the estate out of which the legacies arise, however small the same may be, and are not increased according to the size of the legacy. Any other construction in our judgment would lead to an absurdity. It would be holding that Congress intended to lay down two rules in the same section without any apparent distinction or difference as to the subject-matter. If it be conceded that the rates established upon the legacies arising out of estates whose volume exceeds $10,000 and does not exceed $25,000, do not depend upon the size of the legacies but upon the volume of the estate, then it would seem almost rediculous to imagine or to suppose that Congress intended to change their intent touching all legacies exceeding $25,000.

By any such construction there would be a want of uniformity between the rates imposed upon legacies arising out of an estate exceeding $10,000, but not exceeding $25,000, and rates imposed upon legacies of the same amounts arising out of estates of more than $25,000. Such construction would clearly render the whole law unconstitutional, as a different rate would be created by the

law itself touching legacies of the same size and amount. Legacies of any and every amount arising out of estates from $10,000 to $25,000 are taxed at a fixed rate according to relationship.

Legacies arising out of estates exceeding $25,000 would not according to the construction that the amount of tax is measured by the amount of legacies and not by the volume of the estate out of which they arise, be taxed at all in case such legacy be $25,000 or less.

Thus, a legacy to a child of $24,000, where it arises out of an estate of $25,000 or less, is taxed by the statute at the sum of $180; or, if given to a stranger in blood or to charity, it would be taxed at the sum of $1,200, while if the same sum of $24,000 were given to a child or charity out of an estate of $25,001 or out of estate of $1,000,000 or $50,000,000 it would not be taxed at all.

This result, of course, is absurd, and is based upon the theory that all legacies arising out of estates between $10,000 and $25,000 are taxed not according to the legacies but according to the amount of the estate out of which they are drawn, and that all legacies growing out of estates over $25,000 are measured by the amount of the legacy.

This is the result of such construction if the last clause in italics, namely, "*Where the amount or value of such property shall exceed $25,000* but shall not exceed," etc., "the rates of duty or tax above set forth shall be multiplied," etc., means the amount of the legacy and not the volume of the estate.

This would be an absurd result and could have never been the intention of Congress. Such a construction, as we have seen, would at once render the whole act unconstitutional.

It appears, by examining the proceedings of Congress, that the main idea was that estates composed of personal property should be reached by this method of taxation, because it was supposed that for many reasons personal property had theretofore largely escaped taxation.

To give another illustration: Suppose a man having an estate of $100,000 bequeathed the same to his four children, giving each $25,000. Such legacies could not be taxed at all, because they do not exceed $25,000, but arise out of an estate exceeding $25,000.

To give another illustration: If a man leaving an estate of $75,000 should give his wife $50,000 and each of his five children $5,000, such legacies could not be taxed, as the legacy to the wife is exempt and the legacies to the children are less than $10,000, though such legacies would be taxed in case the entire estate had only been $25,000 instead of $75,000. This result would be obtained in case the whole statute should be construed to mean that the rate is fixed by the amount of the legacy and not by the volume of the estate. It was clearly the intention of Congress to reach *large estates*, largely untaxed during the lifetime of decedents, and by such interpretation the whole estate, however large, would escape if testator divided it into legacies of $10,000 or less.

These illustrations are sufficient to show that Congress could not have had any such intention

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It is a well-recognized principle also that *contemporaneous exposition* by the executive branch of the government or other branches may be referred to by the courts for the purpose of ascertaining the meaning of a statute where ambiguous. It is a remarkable circum-

stance that in the case at bar, every lawyer in the case assumed, without much or any argument, the interpretation of this act to be that the tax or duty imposed was to be measured by the volume of the estate and not by the amount of the legacy.

This assumption was also made and acted upon by the solicitor general. (See pp. 11 and 22 of his first printed argument.) Upon application of the treasury department, the legal department of the government advised that such was the construction.

It would seem, therefore, that this must be the natural construction, and there did not seem to be any ambiguity to the counsel on either side.

We refer to this because it somewhat aids the court in ascertaining the common sense view taken by reasonably intelligent men, and assumed without argument. Had there been any doubt in the minds of any counsel, it must be presumed that something more would have been said touching such construction.

The construction contended for by us must be the natural construction, and it must require some supple exercise of the reasoning faculty to reach a different conclusion touching this statute.

The current of authority at the present day is in favor of reading a statute according to the natural and most obvious import of the language, without resorting to subtle and forced constructions for the purpose of either limiting or extending its operation. Courts will not pervert language in order to render a law either constitutional or unconstitutional, but will try to ascertain the meaning of the parties using the same.

It has some value also that the treasury department of

the government has construed this statute in the same way and all the officers of the government have enforced the tax accordingly, so far as it has been enforced.

There is another source of exposition, while not conclusive, yet it must have a potent influence over the minds of men touching the just construction of a statute; it is the construction given to the same by the different members of the legislature that passed it. The sections in question were not in the original bill when it came from the House, but they were introduced as an amendment by the Senate finance committee, and the same seems to have been in charge of Senator Wolcott of Colorado.

We find in the Congressional Record the remarks of various senators which we will hereafter set out, and it is remarkable that not a single word was said by any one in the Senate or House, so far as we can ascertain, giving a contrary or different construction to the sections in question.

In the course of the consideration of these two sections the following discussion took place in the Senate (May 20, 1898, Congressional Record, Vol. 31, part 6, 55th Congress, second session, p. 5074):

> "Mr. Lodge: * * *
>
> "There is another point that I desired to ask about. I may be wrong in my interpretation of the bill, but what appears to me to be the case is that if a man inherits $100,000 from an estate of $200,000, he pays one tax. If he inherits $100,000, exactly the same amount, and from an estate of $1,000,000, he pays a much heavier tax. The man who inherits $100,000 from the estate of $1,000,000 may be a poor man, and the man who inherits $100,000 from the estate of $200,000 may be a rich man, and yet the man inheriting the $100,000 from the estate of $1,000,000 pays two and a half times as

much; that is, the tax appears to be levied upon the original estate, without reference to the beneficiaries. I don't see why $100,000 in a legacy should pay more coming from an estate of one size than coming from an estate of another size.

Mr. Wolcott: I should like to ask the senator from Massachusetts if he believes, in view of some of the enormous accumulations of fortunes in this country, out of which the personal property pays practically nothing in taxation during the life of the owner, it is inequitable that a personal estate of $5,000,000 should pay a greater sum proportionately to the government than an estate of $20,000?''

* * * * *

Mr. Lodge: That opens up the whole question of a graduated tax. I believe as a matter of sound taxation the object is to tax the dollar and not the man. I believe the dollar should be taxed, whether it is $1 from $20,000, or $1 from $5,000,000.

Now, I favor an inheritance tax as a principle of taxation. * * * I think also that it is a tax which ought to be left to the state and not taken by the United States. But I fail to see the justice of taxing a man who gets perhaps $5,000 as a small bequest from an estate of a million dollars. Perhaps it is all that he has. When that is left him by a person possessing a million-dollar estate, why should he pay two and one-half times as much as a man who gets precisely the same amount from a smaller estate?

I agree it seems on the surface proper that a large estate should pay more than a small estate, and if the tax was graded in that way it might be open to less objection. But this is graded so as to tax the legacy on a different scale. The object is, of course, to reach the property, and seems to me that where the legacy is the same, a man should not be forced to pay more on the same amount because he happens to receive his legacy from a larger estate.''

And again on page 5079 of the same volume:

"The Secretary: On page 67, line 6, strike out 'five' and insert 'ten' before 'thousand' so as to read:

'Where the whole amount of said personal property shall exceed in value $10,000 and shall not exceed in value the sum of $25,000, the tax shall be:'

Mr. Chandler: I wish to inquire whether the limitation on the amount is a limitation as to the whole estate or as to the individual legacy.

Mr. Wolcott: It is only the personal estate, I will say to the Senator.

Mr. Chandler: The provision is:

'Where the whole amount of said personal property shall exceed in value $10,000, and shall not exceed in value the sum of $25,000, the tax shall be.' Does that mean the whole estate or the individual legacy?

Mr. Wolcott: *It applies to the whole estate.*

Mr. Chandler: If the whole estate which is bequeathed by the testator should amount to $10,000, is every legacy, however large or small, taxable?

Mr. Wolcott: Certainly. *The amount of the tax on it is determined by the totality of the personal property left. If it be $10,000, then it is taxable, however small or large the legacy may be.*

* * * * *

Mr. Chandler: I understand that; but I was not certain whether the words 'such personal property' meant the totality of the personal property in the hands of the testator or donor, or whether it meant where the personal property passing to each individual amounted to $10,000. I understand now that it applies to a case where the whole estate exceeds $10,000, and if the amendment be adopted there will be no tax upon anything less than that.

Mr. Wolcott: That is right.

Mr. Chandler: And where it does exceed that amount every legacy, large or small, is to pay the tax which is provided."

We do not claim that this court is bound by the re-

marks of senators during the proceedings in Congress as to the construction of this act. It is the function of this court, however, to interpret the meaning of the statute and to ascertain the object intended by Congress to be reached. The only indication which can be found in the deliberations of Congress on the point under consideration we have already set forth *verbatim*. This inheritance tax originated in the senate. Its sole object was to tax large accumulations of personal property left by decedents. The senate in the discussion of these sections stated their object and adopted them with that end in view. Ought not this court to construe this act in the light of the legislative interpretation, and assume that the construction put upon it by the body enacting it to be the true construction?

Summary.

1. That the interpretation of the words, "that any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares *arising* from personal property *where the whole amount* of such personal property, as aforesaid, shall exceed the sum of $10,000 in actual value, passing," etc., "shall be and are hereby made subject to a duty or tax," is that the administrators, executors or trustees are to be taxed with respect to such legacies, only when the volume of the estate out of which they arise exceeds $10,000. and not where the legacies or direct shares exceed $10,000.

2. That the interpretation of the first italicized clause, namely, "where the whole amount of said personal property shall exceed in value $10,000 and shall not exceed

in value the sum of $25,000, the tax shall be," etc., is that the volume of the estate out of which such legacies arise must exceed $10,000 and not exceed $25,000 irrespective of the amount of such legacies.

3. That the interpretation of the words in the first numbered paragraph, namely, "Where the person or persons entitled *to any beneficial interest* in such property," etc., is that the legatee or distributee is the person indicated who is *entitled to any beneficial interest*, and the words "*person entitled to any beneficial interest*" indicate that a person having any beneficial interest, *however small, in such property*, where the whole estate exceeds $10,000, and does not exceed $25,000, referred to in the previous italicized clause, is subject to the rate indicated in said *first numbered paragraph.*

4. That the interpretation of the words at the end of the first numbered paragraph, namely, "at the rate of seventy-five cents for each and every hundred dollars of the clear value of *such* interest in *such* property," is, that such interest as any beneficiary or legatee or distributee possesses, *however small, in such property* is an *interest* which is to be carved out of an estate exceeding $10,000 and not exceeding $25,000, and that such interest so subjected to such rate need not be $10,000, but may be much less. "Any interest" or "such interest" implies that it need not be the whole interest pointed out in the preceding italicized clause.

5. That the interpretation of the words in the second italicized clause, which is at the end of the fifth numbered paragraph, namely, "Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax

above set forth shall be multiplied by one and one-half," etc., is that the words, "amount or value of said property," relate to the volume of the whole estate precisely as do the words, "the whole amount of said personal property," used in the first italicized clause, just preceding the first numbered paragraph; and that the rate of the tax is to be levied upon the legacy, however small it may be, where it arises out of an estate exceeding $25,000, etc., and that the rate is not measured by the amount of such beneficial interest or legacy, but by the volume of the estate, precisely as in the first instance.

6. To hold that by the latter portion of the section all legacies exceeding $25,000, etc., are to be taxed at an increased rate and that the tax is not to be measured by the volume of the estate out of which the legacy arises, is to hold that Congress changed its intention with reference to such larger estates, which is not possible. Such interpretation would also render the entire statute clearly unconstitutional; in that legacies of the same amount going to persons standing in the same relation to the decedent would be taxed at a different rate.

The law cannot be constitutional if both intentions are embodied in it, namely, that as to estates exceeding $10,000 and not exceeding $25,000, the rates should be fixed by the volume *of the estate* and not by the amount of the legacy, and in estates exceeding $25,000 that the rate should be fixed by the amount *of the legacy* and not by the volume of the estate out of which it arises.

7. If there be two intentions expressed in the statute we would have want of uniformity in four particulars:

(*a*) In the first place we would have a tax upon legacies of any amount which arise out of an estate exceeding $10,000 and not exceeding $25,000.

(*b*) We would have a tax upon legacies measured by their amount where they exceed $25,000.

(*c*) We would have no tax upon legacies which are less than $10,000 and which arise out of estates that are less than $10,000.

(*d*) And we would have no tax upon legacies of $25,000, and less, which arise out of estates of more than $25,000, be the same a hundred thousand dollars, a million dollars, or fifty millions.

8. Contemporaneous exposition aids the court in arriving at a correct construction.

Our exposition was adopted by the legal department of the government.

It was adopted by the treasury department of the government.

It was adopted by all of the counsel in these cases, substantially without argument, including counsel for the government.

It was adopted in the discussion in Congress, and no other interpretation was suggested.

Considerable amounts of revenue have been collected upon this interpretation.

Respectfully submitted.

ABRAM M. PENCE,
GEORGE A. CARPENTER,
SHIRLEY T. HIGH,
Counsel for Appellants.